

STATE OF NEW HAMPSHIRE  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES. AFL-CIO, LOCAL NO. 1801	:	
	:	
Complainant	:	
	:	CASE NO. A-0470
v.	:	
	:	DECISION NO. 80042
TOWN OF SALEM, NEW HAMPSHIRE, PUBLIC WORKS DEPARTMENT	:	
	:	
Respondent	:	

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APPEARANCES

Representing the Complainant, AFSCME, LOCAL 1801:

William J. McDonough, Executive Director

Representing the Respondent, town of Salem:

Robert Leslie, Esq., Counsel  
Donald Jutton, Town Manager  
Gary Wulf, Chief Negotiator

BACKGROUND

This case involves an alleged violation of RSA 273-A:5, I(g) by failure of the town of Salem (Town) to comply with the statute or any rule adopted under it and violation of 273-A:12, III, failure to present the Fact Finder's report to the appropriating body for final acceptance or rejection.

AFSCME Local #1801 (Union) states that the parties were in negotiations for several months and reached impasse and subsequently went through mediation and fact-finding. The Union on May 16, 1980 voted to accept the fact-finder's report and thirty days later, the Board of Selectmen voted to

reject the report. On the 25th of June, the Chief Negotiator for the town informed the Union that the Board of Selectmen did not intend to submit the report to the legislative body as required under 273-A.

The remedies sought by the Union were finding of unfair labor practice on the part of the town and an order to the Board of Selectmen to call a special town meeting in order to bring the report to the proper legislative body.

The Town's position was that a special meeting to consider the report would have to be called and that RSA 39:3 prescribes the conditions under which a town can hold special meetings and percentage of voters required under those circumstances; however a petition to the Superior Court for a special meeting requiring money, time, costs and legal fees would necessarily have to be of an emergency nature with no guarantee that the Court would grant or deny the petition. It further denied their refusal to present the report to the legislative body, but did state it would submit it at its next Annual Meeting.

#### FINDING OF FACTS

-- The Union on September 28, 1979 did file notification to the Town Manager of their intent to commence bargaining on a new contract and requested the town advise them of acceptable dates some time the latter part of October;

-- The Town initiated the requests for negotiations on October 24th and November 19th and the Union presented its demands on December 13th and the parties first met on January 3, 1980. Several sessions were held prior to impasse and mediation.

-- That the Town, in accordance with RSA 39 (Time for holding town

meetings and warnings thereof), the Town by warrant dated February 25, 1980 set the date for deliberative session for the March 15, 1980 annual meeting and that the meeting was held on that date:

-- The delay in the bargaining and negotiation process, and subsequent difficulties in bringing matters to the town meeting, was not the fault of the town, indeed they may have been no one's fault but did unduly complicate the normal negotiation process.

-- Despite the difficulties encountered in the bargaining and negotiating process, the Town was willing to provide for a contract resolution at town meeting or at a special meeting provided a contract was negotiated:

-- When no contract agreement was reached the town refused to submit the fact-finder's report, with which they disagreed, to a special town meeting, preferring to submit the report and any subsequent negotiation results to the regular town meeting of 1981.

BOARD DECISION AND ORDER

After careful review of the testimony and evidence presented at the October 9th hearing, the Board finds. . .

1. The law does not require the calling of a special town meeting unless the circumstances are such that the submission of the fact-finding report cannot be accomplished without a special meeting, in order to conform to the law's requirement.
2. The circumstances of the case do not warrant the call of a special town meeting but rather resolution can be had at the regular 1981 town meeting.

*Robert E. Craig*

ROBERT E. CRAIG, Alternate Chairman

Signed this 20th day of November, 1980.

By unanimous vote: Alternate Chairman Craig presiding, members Hilliard, Mayhew and Osman present and voting. Also present, Executive Director Evelyn C. LeBrun.